



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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MARSHALL L. CLARK,	:	W. R. GRACE & CO.'S ANSWERS
	:	TO JOHNS-MANVILLE SALES
Plaintiff,	:	CORPORATION'S FIRST SET OF
vs.	:	INTERROGATORIES
	:	
JOHNS-MANVILLE SALES	:	
CORPORATION, et al.,	:	
	:	
Defendants.	:	
	:	
JOHNS-MANVILLE SALES	:	
CORPORATION,	:	
	:	
Third Party Plaintiff,	:	
vs.	:	
CAREY CANADIAN MINES, LTD.,	:	Civil No. C-78-0208
et al.,	:	
	:	
Third Party Defendants.	:	

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Comes now the third party defendant W. R. Grace & Co., and answers the Interrogatories of third party plaintiff as set forth hereinafter. Third party defendant W. R. Grace & Co. reserves the right to amend or supplement its answers if it finds that inadvertant admissions or errors have been made, or if additional or more accurate information becomes available that is required to be provided by the Federal Rules of Civil Procedure.

1. Set forth the name, address and title of the person(s) answering these interrogatories on behalf of the third party defendant.

ANSWER: Robert A. Merther, Manager, Fire Protection Products, 62 Whittemore Avenue, Cambridge, Massachusetts.

2. Set forth the name, address and title of all the persons who supplied information with respect to the answering of these interrogatories.

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ANSWER: Robert A. Merther, Manager, Fire Protection Products; Harry A. Eschenbach, Director of Health, Safety and Toxicology; Michael B. Cohan, Assistant Counsel - 62 Whittemore Avenue, Cambridge, Massachusetts.

3. State whether W. R. Grace & Co. has ever used the name "Zonolite" with respect to any of its products, divisions or any other of its business activities, and if so:

- a. Set forth the date when the name "Zonolite" was first used and identify the years used thereafter.
- b. Describe the business acquisition or other circumstances out of which W. R. Grace & Co. gained the right to use the name "Zonolite".
- c. Identify the nature of the use of the name "Zonolite" over the years since its first use.
- d. Identify any and all writings of any kind or nature, whether letter, memorandum or otherwise which relate and/or pertain to your answers to this interrogatory, and the name, address and title of the person(s) having custody of same.

ANSWER: Yes.

- a. From 4/16/63 to date;
- b. Acquisition by Grace of the assets of Zonolite Company on 4/16/63;
- c. Since Grace's acquisition of the right to use the requested trade mark Zonolite<sup>(R)</sup> it has been used in connection with the marketing and sales of products of Grace's Construction Products Division.
- d. Innumerable "writings of any kind or nature" exist which "relate and/or pertain" to the answers to this interrogatory. Grace objects to this interrogatory as unduly burdensome and not reasonably calculated to lead to the discovery of evidence admissible at trial.

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4. Set forth whether or not third party defendant sold vermiculite in any form to Utah Lumber or Vermiculite Intermountain during the period from 1945 to 1975, and if so:

- a. Set forth the time period in which vermiculite was sold and identify whether it was to Utah Lumber or Vermiculite Intermountain.
- b. Identify what records third party defendant has identifying the said sale(s).
- c. Identify any other writings of any kind or nature, whether letter, memorandum or otherwise which relate and/or pertain to the sale of vermiculite to Utah Lumber and/or Vermiculite Intermountain.
- d. Set forth the name, address and title of the person(s) having custody of the documents referred to in the answer to this interrogatory.
- e. Identify the form or nature of the vermiculite that was sold as referred to in a.

ANSWER: Yes.

- a. Records exist only from 1971 through 1975 but Grace believes that sales were made from 1963 through 1975.
- b. Sales invoices and records of shipment to Vermiculite Intermountain.
- c. None.
- d. Robert Merther, 62 Whittemore Avenue, Cambridge, Massachusetts.

5. With respect to any vermiculite sold to Utah Lumber and/or Vermiculite Intermountain as set forth in your answer to Interrogatory No. 4, set forth the following:

a. With respect to that which was sold, identify that which was mined and/or obtained from within the State of Montana.

b. With respect to the vermiculite which was mined and/or obtained within the State of Montana as referred to in a, identify the location in Montana from which such was mined and/or obtained prior to processing.

c. Identify the location(s) where the vermiculite referred to herein was processed prior to shipment to Utah Lumber and/or Vermiculite Intermountain.

d. Identify any and all writings of any kind or nature, which relate and/or pertain to the foregoing answers and the name, address and title of the person(s) having custody of same.

ANSWER: a. All

b. Libby, Montana

c. Libby, Montana

d. See response to interrogatory 3(d)

6. Has the third party defendant at any time performed any tests or studies with respect to the content of vermiculite mined and/or processed from the State of Montana, and if so, set forth the following:

a. Date of each said test and/or study.

b. Whether the results or other information pertaining to said test(s) and/or study(ies) is contained in written material.

c. Name, address and title of the person(s) having custody of said written material.

ANSWER: a. 5/9/73  
5/30/73  
5/30/73  
6/7/73  
6/26/73  
10/4/73

b. Yes

c. J. C. Yang, Manager, Research Technologies,  
62 Whittemore Avenue, Cambridge, Massachusetts.

7. During the period of time from 1945 to 1975 has the third party defendant done any kind of monitoring with respect to the contents of vermiculite ore mined and/or processed and/or utilized within the State of Montana, and if so:

- a. Indicate the type of monitoring that was done.
- b. Set forth the time periods during which the monitoring was performed, identifying that which was done within the specific time period.
- c. State whether or not any writings of any kind or nature were prepared at any time with respect to said monitoring and if so, identify such including that which presently exists.
- d. Set forth the name, address and title of the person(s) having custody of the aforesaid writings.

ANSWER: Yes.

a. Monitoring the contents of the mined vermiculite ore in terms of vermiculite, waste material and moisture, also monitoring the yield of expanded vermiculite.

b. 1963-1975

c. Yes

d. W. J. Craig, Operations Manager, Libby, Montana.

8. At any time between 1945 and 1975, was "Mono-Kote" ever a name which was utilized by third party defendant with respect to any product that it manufactured or for which it granted a license to other parties to manufacture and/or sell, and if so:

- a. When said name was utilized.
- b. The nature of the product for which the name was utilized.

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c. Identify whether third party defendant manufactured "Mono-Kote" gave a license or made some other arrangement for its manufacture and if licensing or other arrangements, identify the specifics of the licensing and/or other arrangements.

d. Identify any and all writings of any kind or nature, whether letter, memorandum or otherwise which relate and/or pertain to your answers to the interrogatory, and the name, address and title of the person(s) having custody of same.

ANSWER: Yes.

a. 1960 to date.

b. Cementitious fire proofing.

c. Grace both manufactured and licensed others to manufacture Monokote. License agreements were pursuant to Grace's patent rights and confidential proprietary information in respect of MONOKOTE, were non-exclusive in nature and provided for royalty payments to Grace based on volume.

9. Did third party defendant at any time enter into any arrangement with the Zonolite Co., with respect to the purchasing of any assets, stock, trade name usage or other transaction wherein third party defendant then began using the name "Zonolite", and if so:

a. Identify the particular business transaction(s).

b. Date of each said transaction.

c. After the completion of each said transaction identified, indicate whether or not the Zonolite Co. continued in existence or other status of the company including a full description as to its status.

d. Identify any and all writings of any kind or nature, whether letter, memorandum or otherwise which relate and/or pertain to your answer to this interrogatory, and the name, address and title of the person(s) having custody of same.

ANSWER: a. Grace acquired the assets of Zonolite Company (including certain trademarks and trade names) on 4/16/76.

- b. See response to interrogatory 9(a).
- c. Grace is unable to respond to this interrogatory.
- d. See response to interrogatory 3(d)

10. During the period from 1945 to 1975, as to vermiculite sold to Utah Lumber and/or Vermiculite Intermountain, if W. R. Grace & Co. did not actually mine and/or process the ore from which the vermiculite was obtained, set forth the name and address of each company from which W. R. Grace & Co. obtained the vermiculite.

ANSWER: From 1963 to 1975 Grace mined and processed all of its vermiculite ore itself.

11. Set forth whether or not W. R. Grace & Co. has ever conducted any testing as to whether vermiculite obtained from within the State of Montana contained any asbestos in any form and if such testing has been done,

- a. Identify each test.
- b. Date of each test.
- c. Results of each test or if such results are in writing, identify each writing and the name, address and title of the person(s) having custody of same.

ANSWER: (a) and (b):

2 vermiculite samples	May 9, 1973
4 vermiculite samples	May 30, 1973
4 vermiculite samples	May 30, 1973
4 vermiculite samples	June 7, 1973
2 vermiculite samples	June 26, 1973
3 vermiculite samples	October 4, 1973

c. J. C. Yang, Manager, Research Technologies,  
62 Whittemore Avenue, Cambridge, Massachusetts.

12. Between the years 1945 and 1975, identify if there were any sales from W. R. Grace & Co. to Utah Lumber and/or Vermiculite Intermountain and if so, other than as already answered above,

- a. Identify the nature of the goods or products sold.
- b. Time periods and volume of sales.
- c. Identify any and all writings of any kind or nature which relate and/or pertain to your answers to the interrogatories and the name, address and title of the person(s) having custody of same.

ANSWER: See response to interrogatory 4.

13. Set forth the name, address and title of witnesses third party defendant plans to call or those who third party defendant anticipates it may call.

ANSWER: Unidentified at this time.

14. Other than as already identified, identify any and all writings of any kind or nature whether letter, memorandum or otherwise which relate and/or pertain to your answers to these interrogatories and the name, address and title of the person(s) having custody of same.

ANSWER: See response to interrogatory 3(d).

Dated this 13th day of March, 1981.

W. R. GRACE & CO.

Robert A. Merther  
Robert A. Merther  
Manager, Fire Protection  
Products

STATE OF MASSACHUSETTS)

County of Middlesex ) ss.

Robert A. Merther, being first duly sworn, deposes and says that he is Manager, Fire Protection Products of third party



defendant W. R. Grace & Co., and that the foregoing Answers are true  
and correct to the best of his knowledge, information and belief.

Robert A. Merther

Robert A. Merther  
Manager, Fire Protection  
Products  
W. R. Grace & Co.

Subscribed and sworn to before me this 13<sup>th</sup> day of March,

1981.

Michael D. Cobb

Notary Public  
Residing at:

Jensen Chevrolet

My Commission Expires:

12-3-1987

I hereby certify that I mailed a true and correct copy of the foregoing Answers to Interrogatories, postage prepaid, to Ralph L. Dewsnup, attorney for plaintiff, 2020 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84101; Gifford W. Price, attorney for Johns-Manville, 800 Kennecott Building, Salt Lake City, Utah 84133; Elliott J. Williams, attorney for Celotex and Jim Walter, 700 Continental Bank Building, Salt Lake City, Utah 84101; P. Keith Nelson, attorney for Carey Canada, P. O. Box 2465, Salt Lake City, Utah 84110; and to Timothy R. Hanson, attorney for defendant Glen Alden and Rapid American, 650 Clark Leaming Office Center, 175 South West Temple, Salt Lake City, Utah 84101, this \_\_\_\_\_ day of March, 1981.

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Secretary

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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MARSHALL L. CLARK,	:	W. R. GRACE & CO.'S RESPONSE
	:	TO FIRST REQUEST FOR
Plaintiff,	:	PRODUCTION OF JOHNS-
vs.	:	MANVILLE SALES CORPORATION
JOHNS-MANVILLE SALES	:	
CORPORATION, et al.,	:	
Defendants.	:	
-----oooOooo-----	:	
JOHNS-MANVILLE SALES	:	
CORPORATION,	:	
Third Party Plaintiff,	:	
vs.	:	
CAREY CANADIAN MINES, LTD.,	:	Civil No. C-78-0208
et al.,	:	
Third Party Defendants.	:	

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In accordance with the Federal Rules of Civil Procedure,  
W. R. Grace & Co. hereby answers third party plaintiff Johns-Manville  
Sales Corporation's First Request for Production of Documents served  
on third party defendant's counsel.

W. R. Grace & Co. reserves the right to amend or supplement  
its answers if it finds inadvertent omission or errors have been made  
or if additional or more accurate information becomes available that  
is required to be provided by said rules.

DOCUMENTS

1. All documents and writings of any kind or nature whether  
letter, memorandum or otherwise disclosing, reflecting, pertaining  
or relating to any of third party defendant's answers to Johns-Manville  
Sales Corporation's First Set of Interrogatories to the third party defendant,

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including but not limited to those documents and writings of any kind or nature identified in the answers to said interrogatories and those relied upon, used or referred to in answering the said interrogatories.

RESPONSE

To the extent the Request is unclear and/or burdensome, objection is hereby made. Further, discovery and investigation in the matter is not necessarily concluded and this party is entitled to conclude such. Also, this party does not waive any rights of non-production based upon work product privilege. As indicated in the Answers to Interrogatories of W. R. Grace & Co., third party defendant refers Johns-Manville Sales Corporation to the depositions of Leland K. Irvine and Marshall L. Clark with exhibits attached thereto.

Dated this 3<sup>rd</sup> day of March, 1981.

W. R. GRACE & CO.

Robert A. Merther

Robert A. Merther  
Manager, Fire Protection  
Products

STATE OF MASSACHUSETTS )

: ss.

County of Middlesex )

Robert A. Merther, being first duly sworn, deposes and says that he is Manager, Fire Protection Products of third party defendant W. R. Grace & Co., and that the foregoing Response is true and correct to the best of his knowledge, information and belief.

Robert A. Merther

Robert A. Merther  
Manager, Fire Protection  
Products  
W. R. Grace & Co.

Subscribed and sworn to before me this 3<sup>rd</sup> day of March

1981.

Michael D. Cook  
Notary Public

Residing at

Yonkers, New York

My Commission Expires:

12-7-1982

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ATTORNEYS AT LAW  
800 COMMERCIAL  
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1801/ 321-2773

I hereby certify that I mailed a true and correct copy of the foregoing Response to Request for Production of Johns-Manville Sales Corporation, postage prepaid, to Ralph L. Dewsnup, attorney for plaintiff, 2020 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84101; Gifford W. Price, attorney for Johns-Manville, 800 Kennecott Building, Salt Lake City, Utah 84133; Elliott J. Williams, attorney for Celotex and Jim Walter, 700 Continental Bank Building, Salt Lake City, Utah 84101; P. Keith Nelson, attorney for Carey Canada, P. O. Box 2465, Salt Lake City, Utah 84110; and to Timothy R. Hanson, attorney for defendant Glen Alden and Rapid American, 650 Clark Learning Office Center, 175 South West Temple, Salt Lake City, Utah 84101, this \_\_\_\_\_ day of \_\_\_\_\_ March \_\_\_\_\_, 1981.

\_\_\_\_\_  
Secretary